SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 73-418

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

IN RE:

HARRY PORCYNALEK HUTUL

AN ATTORNEY

Petitioner,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

JOHN CADWALADER MENK
29 South La Salle Street
Chicago, Illinois 60603

Heretofore appearing as amicus curiæ in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of the Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Illinois Revised Statutes c. 110A § 751 (1967).

La Salle Street Press—Chicago

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OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Illinois appears in the Appendix to Petitioner's Brief.

STATEMENT OF THE CASE

The Statement submitted by the Petitioner is sufficient for the presentation of the issues involved.

CONSTITUTIONAL OR FEDERAL QUESTION PRESENTED

It is respectfully submitted that neither a Constitutional nor substantial Federal question is presented.

REASONS FOR NOT GRANTING THE WRIT

I.

THE PETITION WAS NOT TIMELY FILED.

Petitioner previously filed herein an "Application for Extension of Time in Which to File Petition for Writ of Certiorari," and the relevant time schedule set forth on the first page of said document shows August 30, 1973 as the date of "Expiration of Time for Writ of Certiorari unless extended" (Appendix I). The Application for Extension of Time was denied on August 27, 1973 (Appendix II), and the present Petition was docketed in this Court on September 4, 1973 (Appendix III). Thus, the present Petition was not timely filed in accordance with Title 28, Section 2101 U.S.C.A. and should be stricken. See *Credit Co.* v. *Ark. Central Railway*, 128 U.S. 258, 261.

II.

RESPONDENT'S CLAIM THAT HE WAS PLACED IN DOUBLE JEOPARDY BECAUSE HE WAS TRIED BY BOTH STATE AND FEDERAL AUTHORITIES IS WITHOUT MERIT. THAT CLAIM, AND HIS CLAIMS OF COLLATERAL ESTOPPEL AND RES JUDICATA ARE WITHOUT SUBSTANCE AND MOREOVER HAVE BEEN ADJUDICATED BY THE FEDERAL COURTS AND ARE NO LONGER OPEN TO ARGUMENT.

Respondent devotes only one page, and a few lines on another page (pgs. 6 and 7 of Petition) to his "Reasons for Granting the Writ." We will be similarly brief.

We respectfully suggest that Respondent's contentions are most expeditiously answered by the following quotation from the 7th Circuit's opinion reviewing Respondent's conviction in the United States District Court (*U.S.* v. *Hutul,* 416 F. 2d 607). At page 626 of the opinion the Court said:

> "[22] 9. Defendant Hutul contends that the Government was estopped from prosecuting him in the instant case since he had previously been prosecuted by the State of Illinois on the same facts. Hutul argues that his acquittal of the State charges of conspiracy to defraud certain insurance companies, obtaining money by false pretenses, and confidence game bars subsequent federal prosecution by the principles of *res judicata,* collateral estoppel and the Seventh Amendment. Defendant Hutul also contends that he was prosecuted without Government authority.
>
> [23, 24] First, the principles of *res judicata* and collateral estoppel act as a bar to subsequent proceedings only when the parties to each action are the same and the Federal Government is neither the same as nor in privity with that of the State of Illinois. See *United States* v. *Wapnick,* 198 F.Supp. 359 (D.C.E.D. N.Y. 1961), aff'd. per curiam, 315 F. 2d 96, cert. den. 374 U.S. 829, 83 S. Ct. 1868, 10 L.Ed. 2d; *Rios* v. *United States,* 256 F.2d 173 (9th Cir. 1958). Therefore, the principles of *res judicata* and collteral estoppel do not apply to the case at bar, and do not provide a substitute for a defense of double jeopardy.
>
> [25] Second, the Seventh Amendment is inapplicable to the instant case since it applies only to civil suits, not criminal.
>
> [26] Finally, we reject defendant Hutul's contention that his prosecution was without Government authority and therefore void."

Respondent's Petition to the United States Supreme Court for a Writ of Certiorari was denied. 90 S. Ct. 573.

As long ago as 1847, the Supreme Court of the United States decided that, due to the nature of the dual sovereignty existent between the federal government and the various states, separate federal and state prosecutions against a defendant for offenses arising out of a single crime were constitutionally permissible.

> "An offense against the United States can only be punished under its authority and in the tribunals created by its laws; whereas, an offense against a State can be punished only by its authority and its tribunals. The same act . . . may constitute two offenses, one against the United States and the other against a State." *Fox* v. *Ohio*, 5 How. 410, 12 L. ed. 213

This principle of dual sovereignty has been consistently upheld over the years in the nation's courts. In *Abbate* v. *United States*, 359 U.S. 187, the United States Supreme Court considered a claim of double jeopardy where there had been separate federal and state prosecutions and convictions on nearly identical charges stemming from a single course of action. It was proved that Abbate had conspired to dynamite telephone communications facilities; he was convicted on respective federal and state charges of conspiracy to destroy federal property, and conspiring to destroy the property of another. In affirming both convictions, the Court held that the two sovereigns each had legitimate and distinct interests to be protected, and as such each rightfully possessed separate prosecutorial powers in furtherance of those interests.

In the instant case, both the State of Illinois and the Federal authorities had such distinct interests, the former in protecting its citizens from fraud, and the latter in discouraging the illegal use of the U.S. mails in perpetration of fraud. The mail fraud charge could not have been joined in the State Court, since the State of Illinois has no juris-

diction over mail fraud offenses. Respondent's acquittal in the State Court on confidence game charges, etc., could not bar a subsequent federal prosecution for mail fraud. As the Supreme Court of the United States said in *Gavieres* v. *U.S.*, 220 U.S. 338 (1911):

> "A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

Clearly, Petitioner's conduct merited the discipline imposed and the Court's action was required to protect the public and the integrity of the Courts. As this Court observed in the case of *In Re Isserman*, 345 U.S. 286:

> "There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice."

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

JOHN CADWALADER MENK
29 South La Salle Street
Chicago, Illinois 60603

Heretofore appearing as amicus curiæ in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of the Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Illinois Revised Statutes c. 110A § 751 (1967).

APPENDIX I

In re:

No. 43292

Harry Porcynalek Hutul,
an Attorney

} Information 1420

APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable Warren E. Burger, Chief Justice of the United States and to the Honorable William Renquist, Circuit Justice for the Seventh Circuit:

The petitioner, Harry Porcynalek Hutul, prays that an order be entered extending the time for filing a petition for writ of certiorari to and including October 29, 1973. This application is submitted less than 10 days prior to the scheduled filing date for the petition. The pertinent dates are:

March 20, 1973: Order of Disbarment entered in the Supreme Court of the State of Illinois.

June 1, 1973: Petition for Rehearing denied.

August 30, 1973: Expiration of time for writ of certiorari unless extended.

October 29, 1973: Expiration of requested 60-day extension of time for filing a petition to this Court.

The Supreme Court of Illinois rendered an opinion in the above captioned case No. 43292, Information No. 1420, whereby it was ordered that respondent, Harry Porcynalek Hutul, be disbarred. The pertinent nature of the case may be stated as follows:

1. Harry Porcynalek Hutul was disbarred by virtue of conduct allegedly bringing the legal profession into disrepute in being convicted on charged of conspiracy and mail fraud in the Federal District Court in 64 CR

408 in the Northern District of Illinois, Eastern Division, in 1966.

2. Petitioner, Harry Porcynalek Hutul, was acquitted of charges of obtaining money under false pretenses, operating a confidence game and conspiracy to defraud in 1962 upon facts, occurrences, actions and intent identical and the same to those upon which the conviction aforesaid was obtained in 1966. The 1962 prosecution was in the Cook County Criminal Court in 61-2942.

APPENDIX II

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

August 28, 1973

Robert Q. Hoyt, Esquire
69 West Washington Street, Suite 1948
Chicago, Illinois 60602

RE: *In Re: Harry Procynalek Hutul, A-224*

Dear Mr. Hoyt:

Your application for an extension of time in which to file a petition for writ of certiorari in the above-entitled case was presented to Mr. Justice Rehnquist, who has endorsed thereon the following:

"8/27/73. Denied.

W. H. R."

Very truly yours,

MICHAEL RODAK, JR., *Clerk*
By James H. Blondell
Assistant Clerk

lab

cc: John C. Menk, Esquire
29 South LaSalle Street
Chicago, Illinois

APPENDIX III

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

HARRY P. HUTUL
Appellant—Petitioner

vs.

CHICAGO BAR ASSOCIATION
Appellee—Respondent

No. 73-418

To John Menk, Counsel for Appellee—Respondent:

YOU ARE HEREBY NOTIFIED that an—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 4 day of September 1973.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

HARRY P. HUTUL, PRO-SE
Counsel for Appellant—Petitioner

69 West Washington—Chicago
Number and Street

Chicago, Illinois 60602
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice need *not* be filed in the Supreme Court.

CO-75